

REMARKS

Claims 23 – 41 were presented for consideration in the present application and remain pending upon entry of this Response. Applicant respectfully reserves the right to file a divisional application directed to the subject matter of the non-elected claims.

The Office Action asserts that an election of species is required between one of the following species:

Species I, wherein the zeolite is applied to a tampon in granular form; and
Species II, wherein the zeolite is applied to a tampon while in a suspension.

Applicant elects, with traverse, Species I directed to claims 23 – 25 and 27 – 40.

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions. See MPEP 803.

As evidence of burden in the present application, the Office Action asserts that the inventions of alleged Species I and II are independent or distinct because claims to the different species require the mutually exclusive characteristics of such species. The Office Action further asserts that the alleged species are not obvious variants of each other based on the current record. Applicant respectfully traverses these assertions.

First, Applicant submits that alleged Species I and II both provide methods of incorporating zeolite in a tampon. Species I provides that zeolite granules are distributed on a web of the tampon. Species II provides that zeolite powder is suspended in a liquid and then dispensed on an absorbent pad of the tampon. While the zeolite powder in Species II is dispensed on the absorbent pad as a liquid suspension, it is initially provided as a powder before being suspended in a liquid. As such, the assertion that the different species recite mutually exclusive characteristics is clearly erroneous because both alleged species initially provide zeolite in a solid form.

Second, it is respectfully submitted that searching elected Species I is likely to result in finding art pertinent to non-elected Species II. Thus, it is respectfully submitted that searching and examining the subject matter of non-elected Species II along with elected Group I, does not place a serious burden on the Examiner.

In view of the above, Applicant respectfully requests reconsideration and withdrawal of the election of species requirement such that all of the pending claims can be examined together.

The Office Action further asserts that a second election of a species is required between the following species:

Species IA, wherein the zeolite is clinoptilolite, and
Species IB, wherein the zeolite is chabasite.

Applicant elects, with traverse, Species IA directed to claims 23 – 25, 27 – 33 and 39 - 41.

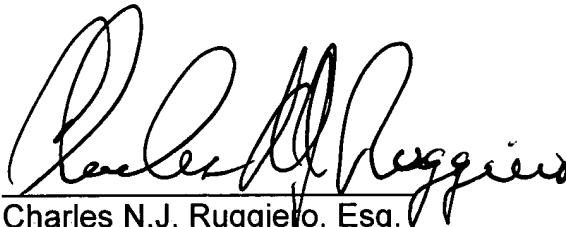
Applicants respectfully submit that searching elected Species IA is likely to result in finding art pertinent to non-elected Species IB. Furthermore, Applicants respectfully submit that both alleged Species IA and alleged Species IB were recited in the two parent applications of the present divisional application, namely U.S. Patent No. 6,353,146 (hereinafter the “'146 patent”) and U.S. Patent No. 6,702,797 146 (hereinafter the “'797 patent”). In the ‘146 patent, claims 1 – 12 recite zeolite as a clinoptilolite and claims 13 – 17 recite zeolite as a chabasite. Similarly, in the ‘797 patent, claims 5 – 9 recite that zeolite is a clinoptilolite and claims 10 – 14 recite that zeolite is a chabasite.

Thus, it is respectfully submitted that searching and examining the subject matter of non-elected Species IB along with elected Species IA, does not place a serious burden on the Examiner.

In view of the foregoing, Applicant respectfully requests favorable reconsideration and withdrawal of the election of species requirement. Also, Applicant respectfully requests that this application be passed to allowance.

If for any reason the Examiner feels that consultation with Applicant's attorney would be helpful in the advancement of the prosecution, the Examiner is invited to call the telephone number below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles N.J. Ruggiero". The signature is fluid and cursive, with the first name "Charles" being particularly prominent.

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